the second marriage will prevail. *Hunter* v. *Hunter*, 111 Cal. 261, 43 Pac. 756, 31 L. R. A. 411, 52 Am. St. Rep. 180 (1896); *Cash* v. *Cash*, 67 Ark. 278, 54 S. W. 744 (1899); *Wagoner* v. *Wagoner*, 128 Mich. 635, 87 N. W. 989 (1901); *Smith* v. *Fuller* (Iowa), 108 N. W. 765 (1906); *In Re McCausland's Estate, supra; Murchison* v. *Green*, 128 Ga. 339, 57 S. E. 709, 11 L. R. A. (N. S.) 702 (1907). The doctrine in Virginia as enacted by statutes is substantially the same as in the instant case. See Va. Code Sections 4538, 4539 and 6239, and cases there cited in the annotated edition.

MANDAMUS—ORDER TO SHOW CAUSE NOT APPEALABLE.—A petition for mandamus was filed against the appellee requiring him to receive certain certificates amending the charter of the appellant corporation. Upon filing of this petition the judge issued an order requiring the appellee to show cause why he should not receive the said certificates. Upon the question of whether or not an appeal could be taken from this order under a statute allowing appeals from judgments on application for mandamus, etc., it was *Held*, no appeal would lie. *Long* v. *Winona Coal Co.* (Ala.), 89 So. 788 (1921).

The sole question involved here is whether or not an order to show cause is a "judgment" from which an appeal may be taken. A judgment has been defined as the "final determination of the rights of the parties in an action." See "Judgment", 4 WORDS AND PHRASES 3829. While "every direction of a court or judge made or entered in writing and not included in a judgment or decree is denominated an 'order'". See "Orders", 6 WORDS AND PHRASES 5020. For a discussion of the legal differences between judgments, decrees, orders, etc., see *Halbert* v. *Alford* (Tex.), 16 S. W. 814 (1891).

Under an Oregon statute allowing an appeal from "an order affecting a substantial right, and which in effect determines the action or suit so as to prevent a judgment or decree therein", no appeal was allowed from an order requiring defendants to produce certain papers for inspection. *Baillie* v. *Columbia Gold Mining Co.* (Ore.), 188 Pac. 418 (1920). This order was certainly analogous to an order to show cause, and it was said that such an order was "purely interlocutory and could only be reviewed, if at all, upon a final appeal bringing up the whole case." *Baillie* v. *Columbia Gold Mining Co., supra.*

An order to show cause does not affect any substantial right, nor does it finally determine the rights of the matter. See *People* v. *Lumb*, 6 App. Div. 26, 39 N. Y. S. 514 (1896). Hence it is held that no appeal lies from an order directing an alternative mandamus to issue since it is in the nature of an order to show cause. *People* v. *Lumb, supra.* Nor in an old Pennsylvania case, decided under a statute similar to the one in the instant case, was an appeal allowed from an order to show cause why *quo warranto* should not issue. *Commonwealth* v. *Davis*, 109 Pa. St. 128 (1885). Neither does an appeal lie from an order by the court requiring the prosecuting attorney to show cause why he should not proceed in commencing an action upon a certain petition. *Johnson* v. *Blackwell*, 91 Wash. 81, 157 Pac. 223 (1916).

The instant case, seems to be sound in principle and in accordance with the weight of authority. However, there is a strong dissenting opinion based upon the construction of the statutes of that State and the dissenting judges also feel themselves bound by a previous case in that State.

LICENSE—MANDAMUS—POWER CONFERRED ON MAYOR TO ISSUE LICENSES NOT MANDATORY.—The city council passed an ordinance to regulate and license the business of selling jewelry. The ordinance did not in express terms confer any discretionary power upon the mayor, whose duty it was to issue all such licenses. The plaintiff applied to the defendant the mayor of the city, for a license to engage in the jewelry business. The plaintiff's application and bond complied with the requirements of the ordinance. The defendant refused to issue the license, on account of the plaintiff's previous irregularities in conducting his business. The plaintiff brought a mandamus proceeding against the defendant to compel him to issue such license, alleging that no discretionary powers in such case were vested in the defendant under the ordinance. *Held*, mandamus denied. *Samuels* v. *Couzens* (Mich.), 183 N. W. 925 (1921).

The power vested in a public officer to grant licenses, unless mandatory in terms, carries with it the right to exercise a reasonable discretion and a mandamus to compel such officer to issue a license will not lie. *People* v. *Mayor of City of Brooklyn*, 14 App. Div. 556, 43 N. Y. S. 1088 (1897); *People* v. *Grant*, 126 N. Y. 473, 27 N. E. 964 (1891). Mandamus will not lie to compel the performance of a power, the exercise of which lies in the discretion of the officer against whom the writ is sought, unless the action of the officer is capricious, arbitrary or unreasonable. *People* v. *State Racing Comm.*, 190 N. Y. 31, 82 N. E. 723 (1907); *State* v. *Board of Examiners*, 52 Mont. 91, 156 Pac. 124 (1916).

Where an ordinance provided that the keepers of public amusements are required to be licensed, and licenses shall be granted them by the mayor it was held to be mandatory and a writ of mandamus was granted to enforce the issuing of the license. *In re O'Rourke*, 9 Misc. Rep. 564, 30 N. Y. S. 375 (1894). Also where an act did not confer such broad authority, but simply provided that no person should exercise the vocation of booking emigrant passengers without a license from the mayor, a mandamus was granted compelling the mayor to issue such license upon compliance with certain requirements. *People* v. *Perry*, 13 Barb. (N. Y.) 206 (1852). Where an ordinance provided that the mayor may issue licenses for musical entertainments, the language was construed to be permissive and not mandatory and the mayor could use discretion. *People* v. *Thacher*, 42 Hun (N. Y.) 349 (1886).

However, it has been held that where public officers are empowered to do that which the public interests require to be done, the proper execution of the power may be insisted upon, though the statute conferring it be only permissive in its terms, as where the word "may" was construed to mean "must." *Mayor* v. *Furze*, 3 Hill (N. Y.) 612 (1842).

This question does not appear to have arisen in Virginia.